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WESTERN DISTRICT OF LOUISIANA

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

MONROE DIVISION

ANTHONY W. PROFIT

CIVIL ACTION NO. 09-1838

VERSUS

JUDGE ROBERT G. JAMES

OUACHITA PARISH

MAG. JUDGE KAREN L. HAYES

RULING

Pending before the Court is Plaintiff's civil rights complaint, filed pursuant to 42 U.S.C. §1983, on October 19, 2009. On February 16, 2010, Magistrate Judge Karen L. Hayes issued a Report and Recommendation [Doc. No. 25], recommending that the Court stay Plaintiff's action pending the outcome of his state court trial on felony charges of aggravated criminal damage to property and simple burglary. On the same date, the Magistrate Judge issued an order [Doc. No. 24] denying Plaintiff's Motion for Appointment of Counsel [Doc. No. 23].

Since the issuance of the Magistrate Judge's February 16, 2010 Report and Recommendation and Order, Plaintiff has filed five Amended Complaints [Doc. Nos. 26, 27, 28, 29 & 32], two sets of Objections to the Magistrate Judge's Report and Recommendation [Doc. Nos. 30 & 31], an appeal of the Magistrate Judge's Order denying appointment of counsel [Doc. No. 33], a response to the Clerk of Court's notice of motion setting on the appeal [Doc. No. 34], and a declaration [Doc. No. 35].

Having reviewed the record in this matter, including Plaintiff's filings, the Court agrees with and ADOPTS the Report and Recommendation of the Magistrate Judge and hereby STAYS this matter under the following conditions:

- a. If Plaintiff intends to proceed with his claims, within thirty (30) days of

the date the state court criminal proceedings against him have concluded, he must file a motion asking this Court to lift the stay.

- b. If the stay is lifted and the Court finds Plaintiff's claims would impugn the validity of his conviction, the action will be dismissed under *Heck v. Humphrey*, 512 U.S. 477 (1994); if no such finding is made, the action will proceed at that time, absent some other bar to suit. *See Wallace v. Kato*, 549 U.S. 384 (2007).
- c. In light of the stay, Plaintiff should not file any more documents in this action until the state court proceedings have concluded.

Additionally, the Court finds that the Magistrate Judge's Order denying Plaintiff's Motion to Appoint Counsel was neither contrary to law nor clearly erroneous and that Plaintiff has not presented the Court with any changed circumstances which would render his need for counsel to be "exceptional." Therefore, his appeal is DENIED.

MONROE, LOUISIANA, this 21 day of April, 2010.



ROBERT G. JAMES
UNITED STATES DISTRICT JUDGE